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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>CESAR AGUSTO ARCHILA-CASASOLA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>

No. 07-70217

Agency No. A029-251-402

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Cesar Augusto Archila-Casasola, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals’ order affirming an immigration judge’s (“IJ”) decision denying his motion to reopen proceedings based on

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, and de novo claims of due process violations, including claims of ineffective assistance of counsel in immigration proceedings. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The agency did not abuse its discretion in denying Archila-Casasola's motion to reopen as untimely because it was filed over two years after the IJ's order, 8 C.F.R. § 1003.23(b)(1), and Archila-Casasola failed to demonstrate due diligence, *see Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003) (equitable tolling is available to a petitioner who establishes deception, fraud or error, and exercised due diligence in discovering such circumstances).

Archila-Casasola failed to comply with the requirements set forth in *Matter of Lozada*, 19 I. & N. Dec. 637, 639 (BIA 1988), and the face of the record does not show a "clear and obvious case of ineffective assistance of counsel." *Castillo-Perez v. INS*, 212 F.3d 518, 526 (9th Cir. 2000).

PETITION FOR REVIEW DENIED.